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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Further Forbearance from)

Title II Regulation for)

Certain Types of Commercial)

Mobile Radio Service)

Providers)

GN Docket No. 94-33

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Notice of Proposed Rulemaking,¹ AT&T Corp. ("AT&T") hereby submits its comments with respect to further forbearance from Title II regulation of certain types of commercial radio service ("CMRS") providers.

In the Second Report and Order in General Docket No. 93-252,² the Commission, pursuant to the requirements of the Omnibus Budget Reconciliation Act of

¹ Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33, Notice of Proposed Rulemaking, released May 4, 1994 ("NPRM").

² Implementation of Sections 3(n) and 332 the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, Gen. Docket No. 93-252, FCC 94-31 (released March 7, 1994).

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1993³ decided to forbear from applying §§ 203, 204, 205, 211, 212 and 214 of Title II of the Communications Act to CMRS providers. In this proceeding, the Commission is considering what additional forbearance, if any, of Title II regulation should be afforded CMRS providers.

Tentatively, the Commission has determined that it will continue to apply a number of congressionally mandated market rules to CMRS providers. These rules include § 223 (restrictions on obscene, harassing or indecent communications), §225 (telecommunications relay services and funding), §226 (TOCSIA⁴ requirements on operator service providers and aggregators), §227 (TCPA⁵ restrictions on unsolicited telephone calls and facsimile transmissions and §228 (TDDRA⁶ pay per call service rules). AT&T supports the Commission's tentative decision.⁷

³ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392(1993).

⁴ Telephone Consumers Service Act, 47 U.S.C. § 226.

⁵ Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227.

⁶ Telephone Disclosure and Dispute Resolution Act, 47 U.S.C. § 228.

⁷ The Commission has also tentatively concluded that it will not apply the provisions of § 210 of the Communications Act relating to franks and passes to CMRS providers. AT&T also supports that decision.

In reaching its tentative decision, and in its request for comments, the Commission has correctly identified the appropriate standard which must be met in order to justify a decision to forbear from applying various substantive provisions of the Communications Act to CMRS providers. This is the three-pronged standard established by § 332(c)(1)(A) which authorizes the Commission to forbear from enforcement of various rules concerning CMRS providers if it determines that

- (i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers;
- and,
- (iii) specifying such provision is consistent with the public interest.⁸

Each of the provisions of the Communications Act which the Commission has tentatively concluded it will continue to apply to CMRS providers falls within subsections (ii) and (iii) of this test. The requirements of the three-pronged test have, therefore, not been satisfied for those provisions.

The provisions of § 223 relating to obscene, indecent and harassing communications as well as those

⁸ Communications Act § 332(c)(1)(A), 47 U.S.C. § 332(c)(1)(A).

provisions established as a result of TOCSIA, TCPA and TDDRA are all intended to remedy abuses which, in the past, had become common with some telephone carriers and/or customers. As such, they provide valuable protection to the public. As the Commission has tentatively recognized, there is absolutely no reason to weaken these consumer safeguards by forbearing from enforcing these rules against CMRS providers. The benefits to the public of enforcing these provisions is great, while the cost to CMRS providers of complying with them would appear to be minimal.

The provisions of § 225 relating to telecommunications relay services and funding, while not necessarily essential to the protection of consumers, are, nevertheless, in the public interest because they ensure that individuals with hearing and speech disabilities are able to communicate with hearing individuals. Once again the public interest associated with the enforcement of this provision of the Act is significant while the cost of compliance to CMRS providers would appear to be quite small.

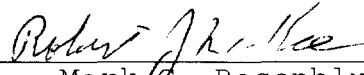
CONCLUSION

As demonstrated above, because they protect consumers and, thus, serve the public interest, the Commission should continue to apply the provisions of §§ 223, 225, 226, 227 and 228 of the Communications Act to CMRS providers.

Respectfully submitted,

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By



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